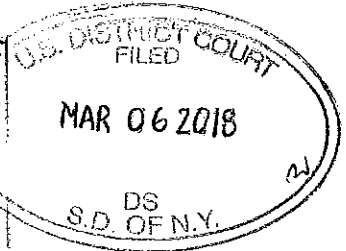
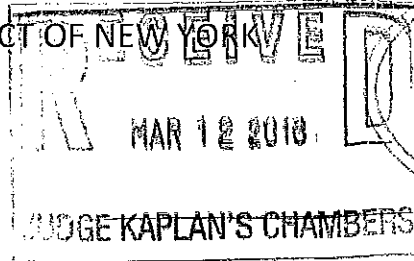
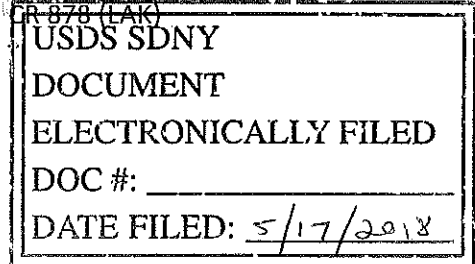


MEMO ENDORSED**DOC # 172**Copies mailed 5/17/18
Chambers of Judge KaplanUNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

VLADIMIR TSASTSIN,)
Defendant/Petitioner,)
)
v.)
)
UNITED STATES,)
Respondent.)

Crim. No. 11 CR 878 (LAK)



PETITION TO EXPEDITE PETITIONER'S MOTION PURSUANT TO RULE 36 OF THE
FEDERAL RULES OF CRIMINAL PROCEDURE

AND NOW, comes petitioner Vladimir Tsastsin, submits this pro se petition as an Emergency Petition pursuant to Rule 36 of the Federal Rules of Criminal Procedure ("Rule 36") to correct a clerical error in the way that BOP is calculating petitioner's sentence. Petitioner's period of incarceration has expired as of February 28, 2018 and the decision of this Honorable Court will affect petitioner's immediate release. The circumstances of this case are very extraordinary and petitioner's constitutional rights (5th and 8th Amendment) will be violated if petitioner has to be incarcerated for any extra time that exceeds the sentence given by this Court. All of these extraordinary circumstances occurred without petitioner's involvement and/or knowledge.

Defendant was convicted on April 26, 2016 in the United States for click fraud related charges (wire fraud and computer intrusion). Before that, defendant had been "convicted in Estonia of laundering of proceeds from click fraud scheme" (Government Sentencing Memorandum). During defendant's United States sentence the Court put aside his Estonian conviction and gave defendant sentence based on the U.S. charges. Defendant received 87 months for his U.S. conviction. The Court relied on the BOP to calculate and credit his foreign jail credit (Sentencing

Memorandum Endorsement

United States v. Tsastsin, 11-cr-878 (LAK)

Mr. Tsastsin was convicted of money laundering in Estonia and of conspiracy to commit wire fraud and conspiracy to commit computer intrusion in the United States. The parties agree that Mr. Tsastsin served time in an Estonian prison on the basis of his Estonian charges from November 8, 2011 until December 20, 2013. He then remained incarcerated in Estonia until October 30, 2014, but in respect only of his pending extradition to the United States. On October 30, 2014, Mr. Tsastsin was extradited to the United States. He subsequently pleaded guilty to conspiracy to commit wire fraud and conspiracy to commit computer intrusion and was sentenced to a total term of imprisonment of 87 months. DI 159.

Mr. Tsastsin now petitions for relief pursuant to Federal Rule of Criminal Procedure 36, which permits the Court to correct a clerical error in a judgment. Mr. Tsastsin argues that relief is proper under U.S. Sentencing Guideline § 5G1.3(b).

Even assuming that Mr. Tsastsin had exhausted the administrative remedies available to him, which he has not, there was no clerical error in the judgment.

The U.S. Sentencing Guidelines are merely advisory. *See United States v. Booker*, 543 U.S. 220, 245-46 (2005). The Court at sentencing declined to adjust Mr. Tsastsin's sentence to account for his term of imprisonment in Estonia from November 8, 2011 until December 20, 2013. Accordingly, there was no clerical error in the judgment and the Court is without jurisdiction to provide the relief sought. *See United States v. Werber*, 51 F.3d 342, 343 (1995) ("Rule 36 authorizes a court to correct only clerical errors in the transcription of judgments, not to effectuate its unexpressed intentions at the time of sentencing." (footnote omitted)). As the government suggests in its letter opposing the petition, DI 174, the relief that Mr. Tsastsin's seeks properly is sought through the administrative appeals process and, upon its exhaustion, through a motion for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241.

Accordingly, the petition [DI 172] is denied.

SO ORDERED.

Dated: May 17, 2018



Lewis A. Kaplan
United States District Judge